

November 5, 2015

NOT FOR PUBLIC RECORD
REQUEST TO FILE UNDER SEAL

VIA EMAIL

Judge Katherine B. Forrest
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 15A
New York, NY 10007-1312

Re: *United States v. Earnest James Ujaama*
04 Cr. 356 (KBF)
Unopposed Motion to Correct Clerical Error in Judgment
Pursuant to Fed. R. Crim. P. 36

Dear Judge Forrest:

Earnest James Ujaama, through counsel, respectfully requests a correction, pursuant to Fed. R. Crim. P. 36, to the Judgment entered in his case. Dkt. No. 513. The government does not oppose this request.

The face of the Judgment entered currently states the following as the description of the counts of conviction:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18USC371	CONSPIRACY TO DEFRAUD THE UNITED STATES	1/1/2000	1
18USC2339A	TERRORIST ACTIVITY	12/19/2001	2
18USC2339A and 2	TERRORIST ACTIVITY	12/19/2001	3

The description of the nature of the offense is unfortunately incorrect as to Counts 1, 2, and 3.

Count 1 was not a conspiracy to defraud the United States. It was a conspiracy to commit an offense against the United States, in this case, a conspiracy to commit a violation of 18 U.S.C.

§ 2339A, providing material support or resources. It was not a conspiracy to defraud the United States, as the Judgment states.

Count 2 was a conspiracy to provide material support, pursuant to 18 U.S.C. § 2339A. Count 3 was a substantive count of providing and concealing material support or resources, again pursuant to 18 U.S.C. § 2339A. The description of these crimes as “TERRORIST ACTIVITY” is misleading and grossly overstates the actual facts. Both of these counts (2 and 3) factually involved bringing Mr. Abassi to Afghanistan. While they can fairly be said to involve providing material support or resources, it is a gross overstatement and misstatement to characterize Mr. Ujaama’s acts as “TERRORIST ACTIVITY.”

This becomes even clearer when one reviews the description of the very same counts of conviction in Abu Hamza’s Judgment. Abu Hamza’s convictions of counts 3, 7 and 8 are exactly the same counts as Mr. Ujaama’s convictions in counts 1, 2 and 3. For the very same convictions on the same counts, Abu Hamza’s judgment states as follows:

Abu Hamza Judgment

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18USC371	Conspiracy to Provide and Conceal Material Support and Re	1/1/2000	3
18USC2339A	Conspiracy to Provide and Conceal Material Support a	12/19/2001	7
18USC2339A	Providing and Concealing Material Support and Resour	12/19/2001	8

To the casual observer of these Judgments, the conduct for which Mr. Ujaama has been convicted seems much more serious than the conduct for which Abu Hamza has been convicted. Of course this is not so. Mr. Ujaama’s conduct is in fact less culpable because he had less knowledge of the ultimate purpose of the provision of the material support or resources. But in any case, Mr. Ujaama’s Judgment should not look like he was convicted of more serious crimes than Abu Hamza.

This is not fair and will undoubtedly have a substantial deleterious effect on Mr. Ujaama’s future prospects. In many cases, this short description of the nature of the offense on the face of the Judgment is of little or no consequence to a defendant. For example, for Abu Hamza, who will spend the rest of his life in prison, this description on the face of the judgment will be a fact of no consequence.

For Mr. Ujaama, on the other hand, the Judgment is one of the very few public documents that future employers and others will have access to when evaluating the nature and seriousness of his prior criminal history. This is because almost all of the other documents in Mr. Ujaama’s case which provide the factual context of his actions—such as the sentencing memoranda of both parties—are necessarily filed under seal. At the very least, Mr. Ujaama should not look like he is a more evil and more dangerous criminal offender than Abu Hamza.

Judge Katherine B. Forrest
November 5, 2015
Page - 3

It is therefore respectfully requested that the Judgment be amended to read as follows:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC 371	Conspiracy to Provide and Conceal Material Support	1/1/2000	1
18 USC 2339A	Conspiracy to Provide and Conceal Material Support	12/19/2001	2
18 USC 2339A	Providing and Concealing Material Support	12/19/2001	3

Mr. Ujaama will have to live with this Judgment as a record of these events for the rest of his life, so it seems reasonable that it fairly and accurately state what he has actually been convicted of. Pursuant to Fed. R. Crim. P. 36, the Court has the authority to correct a clerical error in the judgment at any time.

It is respectfully requested that the Court file an Amended Judgment as is detailed above.

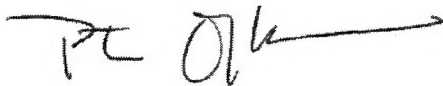
I have forwarded our request for an Amended Judgment, as well as this particular language, to Assistant United States Attorney John Cronan. Mr. Cronan indicates that the government has no objection to this motion and to the filing of an Amended Judgment with this language.

For the Court's convenience, I have included a form of Amended Judgment (AO 245C) corresponding to this correction.

Please contact me if I can provide the Court any further information or assistance in this matter.

Sincerely,

SKELLENGER BENDER, P.S.



Peter Offenbecher
PO:jss

Judge Katherine B. Forrest
November 5, 2015
Page - 4

The Motion is GRANTED. An Amended Judgment shall be filed as indicated above.

THE HONORABLE KATHERINE B. FORREST
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
November____, 2015

cc: AUSAs John Cronan; Shane Stansbury, Ian McGinley
Fred Cohn, Esq.